

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

STEVE TEIXEIRA,

Plaintiff,

v.

MOZILLA CORPORATION a.k.a. M.F.  
Technologies, a California corporation;  
MOZILLA FOUNDATION, a California  
public benefit corporation; LAURA  
CHAMBERS and her marital community;  
WINIFRED MITCHELL BAKER and her  
marital community, and DANI CHEHAK and  
her marital community,

Defendants.

Case No.: 2:24-CV-01032-RAJ

**JOINT LCR 37 MOTION  
REGARDING MOZILLA  
CORPORATION'S DISCOVERY  
REQUESTS TO PLAINTIFF**

**I. DEFENDANT'S INTRODUCTORY STATEMENT**

Pursuant to LCR 37, Defendant Mozilla Corporation ("Mozilla,"), Laura Chambers, and Dani Chehak (collectively, "Defendants") and Plaintiff Steve Teixeira ("Plaintiff") submit this Joint Motion re Discovery Disagreement ("Joint Motion") regarding Plaintiff's responses and objections to Mozilla Corporations' Request for Production No. 8 ("RFP 8"), Request for Production No. 9 ("RFP 9"), Request for Production No. 10 ("RFP 10"), and for such other and further relief as this Court may deem just and proper.

This Joint Motion arises because Plaintiff Steve Teixeira has refused to provide his medical records, despite their central role in Plaintiff's claims and Defendants' defenses. Plaintiff explicitly stated that he is seeking non-economic emotional distress damages based on his allegation the

1 Defendants discriminated against him on the basis of his disability, yet he repeatedly refuses to  
2 provide any medical records stating the same. *See generally*, ECF 28, First Amended Complaint  
3 (“FAC”). Specifically, Plaintiff alleges that Defendants’ actions “have resulted in stress, anxiety,  
4 and inability to sleep.” *Id.* ¶ 106. He further alleges that he and his wife “have also suffered  
5 significant non-economic damages,” including “humiliation, anxiety, stress, and emotional  
6 distress.” *Id.* ¶ 119. Plaintiff also seeks damages for his “emotional well-being” related to his false  
7 light claim. *Id.* ¶ 143. Plaintiff alleges that his termination and removal as Chief Product Officer  
8 (“CPO”) were due to his cancer diagnosis and related leave. *Id.* ¶¶ 116, 133. These allegations are  
9 untrue, as Defendants had documented concerns about Plaintiff’s performance before Plaintiff was  
10 diagnosed with cancer. *See generally*, ECF 14, Answer to Complaint filed by Mozilla Corporation  
11 (“Mozilla Answer.”). In fact, Plaintiff himself suggested, and was ultimately offered, a different  
12 role—one he specifically helped to structure—that he requested solely citing his health as a reason.  
13 *Id.* Now, he argues that he had no health constraints and never asked for a reduced role. *See* FAC,  
14 ¶¶ 101, 114. These claims put Plaintiff’s physical and emotional condition squarely at issue.

15 Mozilla served its first set of discovery requests to Plaintiff on September 6, 2024.  
16 Declaration of Alex Cates (“Cates Decl.”), ¶ 2, Ex. A. RFPs 8-10 requested medical records to  
17 support Plaintiff’s emotional distress claim, medical records pre-dating his diagnosis, and medical  
18 records from the limited time period of March 1, 2024 to May 23, 2024 regarding Plaintiff’s ability  
19 to return to work. *Id.* Plaintiff served his responses on October 11, 2024. *Id.*, ¶ 3, Ex. B. Plaintiff  
20 objected to RFPs 8-10, mainly on the basis that Plaintiff’s medical records are protected by the  
21 psychotherapist-patient privilege and the doctor-patient privilege.

22 On February 4, 2025, Defendants sent Plaintiff a letter outlining the deficiencies in  
23 Plaintiff’s response to Defendants’ first set of requests. *Id.*, ¶ 4, Ex. C. The Parties then met and  
24 conferred on those issues on February 24, 2025. *Id.*, ¶ 5. The conference specifically addressed  
25 RFPs 8-10. *Id.* During the Parties’ conference, Plaintiff’s counsel represented that they were still  
26 conferring with their client about whether they were going to assert an emotional distress claim,  
and they would get back to Defendants on that point. *Id.*

1 On March 17, 2025—only one month ago—Plaintiff’s counsel stated that they could  
2 “confirm that at this time Mr. Teixeira is only seeking garden variety emotional distress damages  
3 for his own emotional distress.” *Id.*, ¶ 7, Ex. D. On March 21, 2025, Defendants’ counsel asked  
4 Plaintiff to confirm that they would “not use Steve’s medical testimony or records at trial, will not  
5 rely on any medical lay or expert witness testimony, and will not rely on healthcare records to  
6 support [their] claims.” *Id.* On March 31, 2025, Plaintiff still had not responded to Defendants’  
7 March 21, 2025 email, so Defendants followed up. *Id.* Plaintiff’s counsel responded that Plaintiff  
8 “declines to waive any health care privilege.” *Id.* On April 2, 2025, Defendants’ counsel noted that  
9 Plaintiff’s response did not answer Defendants’ question. In response, Plaintiff’s counsel stated  
10 that they declined to waive healthcare privileged under RCW 49.60.510, but they offered to  
11 stipulate that Plaintiff had cancer. *Id.* On April 3, 2025, Defendants explained their position that  
12 Plaintiff waived any argument that he was entitled to protection under the healthcare privilege,  
13 given Plaintiff’s claims. *Id.* On April 4, 2025, Plaintiff’s counsel stated that they would only be  
14 willing to produce medical records “sufficient to show Mr. Teixeira’s cancer diagnosis,” which  
15 Defendants declined.

16 On April 8, 2025, Defendants also asked Plaintiff to confirm whether Plaintiff would be  
17 producing medical records in response to RFP 10, consistent with Plaintiff’s original response. For  
18 the first time (and after agreeing to produce), Plaintiff’s counsel asked what relevance such a  
19 request had if they were willing to stipulate to the fact that Plaintiff had cancer. *Id.* Defendants  
20 responded that Plaintiff had placed his health status at issue in the case by (1) alleging that he was  
21 willing and able to perform the duties of the CPO role, which Defendants dispute, and by (2)  
22 alleging that Defendants placed his health status in a false light. Therefore, Defendants need such  
23 records to dispute Plaintiff’s allegations. *Id.* On April 14, 2025, Plaintiff’s counsel stated they had  
24 no responsive documents responsive to RFP 10. *Id.* On April 15, 2025, Defendants explained that  
25 the records need to specifically mention his ability to work to be responsive. *Id.* On April 17,  
26 2025, Plaintiff again stated that there were no responsive records to RFP 10. *Id.* On April 18, 2025,  
Defendants noted that the parties were at an impasse. In sum, after several back-and-forth

discussions regarding the healthcare privilege under RCW 49.60.510, Plaintiff ultimately refused to produce any healthcare records responsive to RFPS 8, 9, or 10.

Throughout the discovery process, Plaintiff has refused to work collaboratively to reach resolution on disputed issues. Plaintiff's health status is a central issue in this litigation, particularly given his allegations of discrimination based on his medical condition and related damage allegations. Despite the relevance of these medical records to the case, Plaintiff has repeatedly refused to produce them. This refusal is particularly striking, given evidence suggesting that Plaintiff himself initiated discussions about a reduced role precisely because of his health. Mozilla Answer ¶¶ 70, 72. These medical records are crucial and directly relevant, as Plaintiff's medical condition and treatment are at the core of this litigation and are central to the allegations in the Complaint. Plaintiff cannot use privilege as both a sword (claiming damages and alleging discrimination based on his condition) and a shield (blocking discovery into the very condition and its effects).

## II. PLAINTIFF'S STATEMENT

Defendants Mozilla Corporation ("Mozilla") and its executives CEO Laura Chambers, Chief People Officer Dani Chehak, and former CEO Mitchell Baker ("Individual Defendants") (collectively, "Defendants") removed Plaintiff from his position and terminated him immediately following his diagnosis and treatment for cancer.

It is undisputed that Plaintiff has cancer. In September 2023, Plaintiff began experiencing blurred vision, which was the first symptom of the ocular melanoma with which he was diagnosed on October 3, 2023. ECF 28, First Amended Complaint ("FAC") ¶ 43; 44. Plaintiff was later diagnosed with a separate, slow-growing cancer known as a neuroendocrine tumor on his pancreas. One of these cancers metastasized to his liver, which was treated starting in 2024. FAC ¶ 110.

Mr. Teixeira was approved for a leave of absence under the Family and Medical Leave Act and Paid Family and Medical Leave Act from October 30, 2023 to February 1, 2024. FAC ¶ 48. Within the first several weeks of his return to work, Defendant Laura Chambers (with whom Plaintiff had never worked) gave Mr. Teixeira a poor performance review and 50% of his bonus.

1 FAC ¶ 71. She then began a process of narrowing Mr. Teixeira's role, citing concerns about his  
2 capabilities and capacity due to his cancer. FAC ¶ 72. Yet Mr. Teixeira was working full time, and  
3 had not requested accommodation. FAC. ¶¶ 73; 74. Seeing the writing on the wall, Mr. Teixeira  
4 initially attempted to collaborate with Ms. Chambers on a redesigned role. When it became clear  
5 that Mozilla intended to demote Plaintiff to be a time-limited individual contributor, he declined.  
6 FAC ¶¶ 80-82. On April 25, 2024, Mr. Teixeira complained to Ms. Chambers that Mozilla  
7 appeared motivated to push him out because of his cancer. FAC ¶ 83. Mozilla immediately isolated  
8 Mr. Teixeira, excluded him from meetings, stripped him of responsibilities, and placed him on  
9 involuntary administrative leave on May 23, 2024. FAC. ¶ 92. He was terminated with two days'  
10 notice on September 1, 2024. FAC. ¶ 102.

11 Mozilla issued several discovery requests for medical records. RFP 8 requests medical  
12 records referring to treatment for emotional distress. RFP 9 requests medical records preceding  
13 Mr. Teixeira's cancer diagnosis and employment with Mozilla. RFP 10 requests medical records  
14 following Mr. Teixeira's return from leave that "relate to your ability to return to work."

15 This case will not be decided based on medical records. Mr. Teixeira's diagnosis is not at  
16 issue—all parties agree he was diagnosed with cancer. Mr. Teixeira's ability to return to work is  
17 not at issue, either. He had returned to work at the time of his firing, and Mozilla was urging him  
18 to continue to work and accept a demoted position terminating at the end of the calendar year. Nor  
19 does Mr. Teixeira claim damages which will depend on medical records; because his emotional  
20 distress claim is confined to garden variety emotional distress, the law shields him from invasive  
21 discovery.

22 Plaintiff objected to RFP 8, 9, and 10. Many of these records retain their privilege, and  
23 others were not relevant to the claims or defenses. In an effort to compromise, On April 2, 2025,  
24 Plaintiff offered to stipulate to Mr. Teixeira's cancer diagnoses. Cates Decl. Ex. D at 7-8. Mozilla  
25 refused this offer. *Id.* at 7. On April 4, 2025, Mr. Teixeira went further with his compromise  
26 proposal, offering to produce medical records sufficient to establish his cancer diagnoses. *Id.* at 6.  
Mozilla refused that offer as well. *Id.* at 5.

Plaintiff requests his fees and costs incurred opposing this motion and RFP 8, 9, and 10. See Declaration of Amy Alexander (“Alexander Decl.”) ¶¶ 1-5.

### III. DISPUTED DISCOVERY REQUESTS

REQUEST FOR PRODUCTION NO. 8: All medical records that refer to treatment for your alleged emotional distress, including psychiatric, psychological, or counseling records.

RESPONSE: Plaintiff objects to this Request as overbroad and seeking information protected by the psychotherapist-patient privilege and the doctor-patient privilege. Plaintiff also objects to the term “medical records” as vague and undefined.

REQUEST FOR PRODUCTION NO. 9: All medical records from August 1, 2019 to August 1, 2022.

RESPONSE: Plaintiff objects to this Request as overbroad and seeking information protected by the psychotherapist-patient privilege and the doctor-patient privilege. Plaintiff further objects to this Request as harassing and untethered from the issues in this litigation. Plaintiff also objects to the term “medical records” as vague and undefined as to which types of records are sought. It is further vague and undefined as to whose medical records are sought, though based on Plaintiff’s good faith interpretation of the request, Defendant is seeking records based on Plaintiff’s own medical care. Plaintiff will not produce medical records from before Plaintiff’s cancer diagnosis in October 2023.

REQUEST FOR PRODUCTION NO. 10: All medical records from March 1, 2024 to May 23, 2024 that relate to your ability to return to work following your cancer treatment.

RESPONSE: Plaintiff objects to this Request as seeking information protected by the psychotherapist-patient privilege and the doctor-patient privilege. Plaintiff also objects to the term “medical records” as vague and undefined. Without waiving these objections, Plaintiff Responds as follows: Plaintiff will search for and produce responsive, non-privileged records, if any.

**A. Defendants’ Argument: Plaintiff has waived any applicable privilege for relevant records by claiming damages and unequivocally placing his medical condition at the center of this litigation.**

While federal law recognizes a privilege protecting confidential communications between a psychotherapist and patient, this privilege, like other privileges, can be waived.<sup>1</sup> *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996). The privilege is waived when a plaintiff places their mental or emotional condition at issue affirmatively in the pleadings. See *Equal Empl. Opportunity Comm’n*

<sup>1</sup> In Washington, these privileges provide essentially the same protection. See *Magney v. Truc Pham*, 195 Wash. 2d 795 (2020); *Lodis v. Corbis Holdings, Inc.*, 172 Wash. App. 835 (2013).

1 *v. Cheesecake Factory, Inc.*, No. C16-1942JLR, 2017 WL 3887460, at \*4 (W.D. Wash. Sept. 6,  
 2 2017) (citing *Maynard v. City of San Jose*, 37 F.3d 1396, 1402 (9th Cir. 1994)). Plaintiff's primary  
 3 objection to the RFPs relies on the psychotherapist-patient and doctor-patient privileges, invoking  
 4 RCW 49.60.510 to argue he can claim "garden variety" emotional distress damages without  
 5 waiving both privileges. Plaintiff's position misinterprets the law and ignores the multiple ways  
 6 he has placed his physical and mental condition at issue in this case.

7 **1. Plaintiff's claim for disability discrimination independently places his medical**  
 8 **condition at issue.**

9 Plaintiff alleges disability discrimination under Washington Law Against Discrimination  
 10 ("WLAD"). FAC ¶¶ 108-117. By asserting discrimination based on disability under WLAD,  
 11 Plaintiff has irrevocably put his medical condition, treatment, and its effects directly at issue. *See*  
 12 RCW 49.60.510(1)(b). The plain language of the law states that:

13 "By requesting noneconomic damages under this chapter, a claimant **does not** place  
 14 his or her health at issue or waive any health care privilege under  
 15 RCW 5.60.060 or 18.83.110, or any other law, **unless** the claimant **[either]**: (a)  
 16 alleges a specific diagnosed physical or psychiatric injury as a proximate result of  
 the respondents' conduct, and relies on the records or testimony of a health care  
 provider or expert witness to seek general damages; **or** (b) **alleges failure to**  
**accommodate a disability or alleges discrimination on the basis of a disability.**"  
*Id.* (Emphasis Added.)

17 RCW 49.60.510(2) limits health care records and communications between a claimant and  
 18 their provider to those "(a) created or occurring in the period beginning two years immediately  
 19 preceding the first alleged unlawful act for which the claimant seeks damages and ending at the  
 20 last date for which the claimant seeks damages, unless the court finds exceptional circumstances  
 21 to order a longer period of time; and (b) relating specifically to the diagnosed injury, to the health  
 22 care provider or providers on which the claimant relied in the action, or the disability specifically  
 23 at issue in the allegations." Defendants agreed to limit the scope of RFP 9 to all medical records  
 24 from the two years prior to Plaintiff's diagnosis. *See* Cates Decl., Ex C.

25 Here, Plaintiff put his medical condition at issue when alleging he was discriminated  
 26 against due to his cancer. In his Complaint, Plaintiff alleges disability discrimination. FAC ¶¶ 116,  
 133. This act functions as a waiver of privilege for all pertinent medical records necessary for the



defendant to respond to the claims and defend against them. *See Konda v. United Airlines, Inc.*, No. 2:21-CV-01320-LK, 2023 WL 2864562, at 3 (W.D. Wash. Apr. 10, 2023) (compelling production of medical records in a disability discrimination case even where the disability itself was not disputed, *finding the plaintiff placed her condition at issue by filing a disability discrimination lawsuit*). Notably, *Konda* also explicitly stated that “[t]he WLAD also provides that a plaintiff waives health care privileges in seeking noneconomic damages if she alleges [...] discrimination on the basis of disability.” *Id.* at 3. Plaintiff’s attempt to distinguish *Konda* because it involved failure-to-accommodate is unavailing; the core principle is that alleging disability discrimination places the underlying condition, and related records, at issue. *See* RCW 49.60.510(1)(a)–(b). Defendants are entitled to the plaintiff’s medical records.

**2. Plaintiff’s allegations put his medical condition at issue beyond “garden variety” distress.**

Plaintiff has squarely placed his mental and emotional condition at issue by seeking “non-economic damages.” FAC ¶ 119. *See also* RCW 49.60.510(1)(a)–(b); *Konda* 2023 WL 2864562, at 1. Plaintiff has also placed his medical condition at issue by seeking damages for “emotional distress.” FAC ¶¶ 106, 119, 143. Consequently, records reflecting diagnosis or treatment for these conditions are directly relevant to his claims and essential for Defendants’ ability to assert a proper defense in this case. Defendants are entitled to explore the existence, extent, and cause of Plaintiff’s alleged emotional distress. The requested records are highly probative of critical issues, including: (1) whether Plaintiff actually suffered the emotional distress he is now alleging; (2) the severity and duration of any such distress; (3) whether the distress stemmed from Defendants’ alleged actions or from other unrelated life stressors or pre-existing conditions; and (4) Plaintiff’s efforts, or lack thereof, to mitigate these alleged damages. Without access to records documenting any diagnosis or treatment Plaintiff received, Defendants are severely hampered in their ability to defend against this significant claim for damages.

The Court’s decision in *Konda* is directly on point. *Konda*, 2023 WL 2864562, at 3. *Konda* involved a WLAD disability discrimination claim similar to the claim at issue here. *Id.* at 1. In



1 *Konda*, this Court explicitly held that a plaintiff alleging disability discrimination under WLAD  
 2 “waives the physician-patient privilege concerning relevant medical records simply by filing the  
 3 lawsuit,” and compelled production, dismissing the plaintiff’s argument that the defendant was not  
 4 entitled to medical records because she was only asserting “garden variety” emotional distress. *Id.*  
 5 at 3. Plaintiff’s reliance on the “garden variety” argument is unavailing and ignores the broader  
 6 context of his lawsuit.

7 Plaintiff’s attempts to shield his records by characterizing his claim as solely “garden  
 8 variety” emotional distress, citing *Dawson v. S. Corr. Entity*, is misplaced. No. C19-1987RSM,  
 9 2021 WL 2012310 (W.D. Wash. May 20, 2021). *See also* Cates Decl., ¶ 7, Ex. D. Even *Dawson*  
 10 acknowledges that privilege *is* waived by a plaintiff “alleging more complex distress, including  
 11 ‘any specific psychiatric injury or disorder, or unusually severe distress.’” *Id.* (citing *Jackson v.*  
 12 *Chubb Corp.*, 193 F.R.D. 216 (D.N.J. 2000)). Plaintiff’s specific direct claim for his *own*  
 13 “anxiety,” —a term often associated with clinical diagnoses and can potentially constitute a  
 14 psychiatric injury recognized under Washington law—meets this higher threshold. FAC ¶¶ 106,  
 15 119, 143. *See also* *Stratton v. Dep’t of Labor & Indus.*, 7 Wn. App. 652, 654 (1972) (recognizing  
 16 that “anxiety” can constitute a psychiatric injury.).

17 Furthermore, *Dawson* is factually and legally distinguishable. The emotional distress  
 18 claims in *Dawson* were made by the *children* of the decedent, not direct claims by the plaintiff for  
 19 their own suffering. Critically, the plaintiffs in *Dawson* were not even alleging a disability  
 20 discrimination claim under WLAD, which is central to Plaintiff’s case here. Unsurprisingly,  
 21 *Dawson* does not analyze the relevant statute governing privilege waivers in WLAD cases, RCW  
 22 49.60.510, further limiting its relevance. Notably, *Dawson* was decided nearly two years prior to  
 23 *Konda*.

### 24 **3. Plaintiff’s causes of action place his health directly at issue.**

25 Plaintiff also alleges Mozilla placed his health status in a false light. FAC ¶¶ 139-143. It is  
 26 well known that truth is an absolute defense to defamation/false light. *Wells Fargo Bank, N.A. v.*  
*Genung*, No. C13-0703 JLR, 2013 WL 6061592, at 7 (W.D. Wash. Nov. 18, 2013) (“truth is a

1 complete defense to a claim of defamation”); *Miller v. Sawant*, 660 F. Supp. 3d 1015, 1020 (W.D.  
2 Wash. 2023). Furthermore, Plaintiff alleges he was capable of performing his CPO duties while  
3 Defendants contend his performance and potentially his stated capacity were at issue. *Id.* ¶¶ 73, 86  
4 (specifically alleging that he was demoted and terminated because of his cancer diagnosis despite  
5 “being able to work full time” and “not request[ing] additional flexibility”). Mozilla is entitled to  
6 Plaintiff’s medical records to investigate and potentially assert this defense regarding Plaintiff’s  
7 actual health status and ability to work during the relevant periods.

8 RPF 10 directly asks for Plaintiff’s medical records that relate to Plaintiff’s ability to return  
9 to work following his cancer treatment. Plaintiff initially answered that “Plaintiff will search for  
10 and produce responsive, non-privileged records, if any.” Cates Decl., ¶ 3, Ex. B. Yet, Defendants  
11 never received any medical records. Cates Decl., ¶ 7, Ex. D. When pressed, Plaintiff’s counsel  
12 changed their tune and asked for their relevance.

13 This information is critical for Defendants’ defense of the case. Plaintiff himself initiated  
14 communications with Defendants about creating a new position for himself that would decrease  
15 his workload so he could focus on his health. Mozilla Answer ¶ 72. Plaintiff not only proposed the  
16 new role but also actively participated in both defining this new position and shaping the specifics  
17 of the job description. *Id.* Defendants agreed and worked with Plaintiff to accommodate his  
18 request, despite his less than stellar performance, structuring this role to align with his  
19 qualifications and his stated capacity to work. *Id.* Plaintiff now alleges that such conduct was  
20 discriminatory. FAC ¶¶ 101, 114. Mozilla needs Plaintiff’s medical records to support its defense  
21 that the new role was made in collaboration with Plaintiff at his direct request. *See Lavington v.*  
22 *Hillier*, 22 Wash. App. 2d 134, 147, 510 P.3d 373, 381 (2022) (holding that even if plaintiff does  
23 not intend to rely on medical records, defendants “could use her medical records to *defend* against  
24 her emotional distress claim. And her medical records clearly had the capacity to lead to the  
25 discovery of admissible evidence...”).

1           **4. Plaintiff’s offer of a limited stipulation is insufficient.**

2           Plaintiff’s offer to stipulate to his cancer diagnosis and produce records “sufficient to show  
3 his cancer” is inadequate. *Id.*, ¶ 7, Ex. D. Defendants require broader discovery into Plaintiff’s  
4 overall physical and mental health history, including the pre-employment period sought in RFP 9,  
5 as well as the limited period requested from March through May 2024 requested in RFP 10 to  
6 fairly defend against Plaintiff’s claims. A narrow stipulation about the cancer diagnosis alone does  
7 not provide the necessary context.

8           These requests are directly relevant and essential to determining the causation and extent  
9 of Plaintiff’s alleged injuries, particularly his claim for significant emotional distress damages.  
10 FAC ¶¶ 119,143. Plaintiff claims that Defendants’ actions caused him specific harms like “stress,  
11 anxiety, and inability to sleep.” *Id.* ¶ 106. To fairly assess whether these conditions were actually  
12 caused or exacerbated by Defendants’ conduct—a core element Plaintiff must prove—Defendants  
13 must understand Plaintiff’s baseline physical and emotional health *before* the events at issue  
14 occurred, and indeed, before his employment began. Additionally, Plaintiff’s overall physical  
15 health when he returned from leave is relevant to show his ability to perform job functions and to  
16 directly counter claims that Defendants mischaracterized his health status and forced him into a  
17 reduced role.

18           Far from being “untethered” from the litigation, Plaintiff’s health history prior to his  
19 employment and cancer diagnosis is fundamental to the core issue of causation and provides  
20 essential context for evaluating all his subsequent claims. Therefore, a narrow stipulation about  
21 the cancer diagnosis alone does not provide the necessary information for Defendants to prepare  
22 their defense. By the nature of his claims, he has waived privilege for relevant medical records  
23 sought in RFPs 8-10.

24       ////

25       ////

**B. Plaintiff's Response**

**1. Washington law squarely shields production of mental health records requested in RFP 8.**

Mozilla contends it is entitled to psychologist-patient privileged medical records, unlimited in time, because Mr. Teixeira pleaded that Mozilla's discriminatory actions caused him emotional distress. This is precisely the scenario that Washington's legislature sought to preclude when it passed RCW 49.60.510, which protects and preserves the psychologist-patient privilege when a victim of workplace discrimination alleges "garden variety" emotional distress.

State law governs privilege where a federal court is sitting in diversity. *Microsoft Corp. v. Immersion Corp.*, No. C07-936RSM, 2008 WL 11343462, at \*2 (W.D. Wash. Mar. 24, 2008); Fed. R. Evid. 501 ("[I]n a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision."). Here, the case was removed under both diversity and federal question jurisdiction, under which circumstances the court may apply state privilege law. *See Konda v. United Airlines, Inc.*, No. 2:21-CV-01320-LK, 2023 WL 2864562, at \*2 (W.D. Wash. Apr. 10, 2023). Regardless, under both Washington and federal approaches to this issue, Mr. Teixeira's psychiatric, psychological, or counseling records are protected from disclosure.

RCW 49.60.510 states:

By requesting noneconomic damages under this chapter, a claimant does not place his or her health at issue or waive any health care privilege under RCW 5.60.060 or 18.83.110, or any other law, unless the claimant:

(a) Alleges a specific diagnosed physical or psychiatric injury as a proximate result of the respondents' conduct, **and** relies on the records or testimony of a health care provider or expert witness to seek general damages; or

(b) Alleges failure to accommodate a disability or alleges discrimination on the basis of a disability.

In his Complaint, Mr. Teixeira alleges emotional distress including embarrassment and humiliation, and "stress, anxiety, and inability to sleep." Compl. ¶¶ 105; 106. He requests non-economic damages, but not damages for a specific diagnosed physical or psychiatric injury caused

1 by Mozilla Corporation's discriminatory actions. Mr. Teixeira made that abundantly clear to  
2 Mozilla Corporation on April 4, 2024. Cates Decl. Ex. D at 6 ("We have already assured you that  
3 Mr. Teixeira seeks garden variety damages only"). Mr. Teixeira then confirmed this again on April  
4 8, 2024. Cates Decl. Ex. D at 4 ("Mr. Teixeira ... is merely seeking garden variety emotional  
5 distress damages, not damages for diagnosed physical or psychiatric injury, nor does he intend to  
6 rely on medical evidence such as the testimony of a medical provider or expert witness."). Under  
7 RCW 49.60.510, Mr. Teixeira has not waived privilege. He has not alleged Mozilla caused him  
8 specific diagnosed injury, and he is clear that he will not rely on the health care records or  
9 testimony for damages.<sup>2</sup> Mozilla's overreaching request is precisely the type of chilling and  
10 abusive request that RCW 49.60.510 was intended to curtail.

11 Mozilla's argument that psychiatric, psychological, or counseling records are "highly  
12 probative" is irrelevant because, simply put, these records are privileged.

13 Mozilla contends that Mr. Teixeira waived privilege by stating in his complaint that he has  
14 experienced feelings of "stress, anxiety, and inability to sleep" following Mozilla's discriminatory  
15 treatment. Mozilla argues that because that term is "often associated with clinical diagnoses," Mr.  
16 Teixeira has waived privilege. Mozilla makes this argument despite Mr. Teixeira's vociferous  
17 assurances that he is not seeking to introduce evidence that Mozilla caused or worsened a diagnosis  
18 of, for example, Generalized Anxiety Disorder or a related clinical diagnosis.

19 Mozilla relies on *Konda v. United Airlines, Inc.*, No. 2:21-CV-01320-LK, 2023 WL  
20 2864562, at \*3 (W.D. Wash. Apr. 10, 2023), but *Konda* is clear that the Plaintiff waived privilege  
21 only *to the extent* that her anxiety, weight loss, loss of appetite, and gastrointestinal issues  
22 "constitute specific diagnosed injuries and Konda intends to rely on the records of testimony of a  
23 health care provider or expert witness to seek general damages with respect to those conditions."

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24  
25  
26 <sup>2</sup> Should the Court grant Mozilla Corporation's motion and order production of health care records under RFP 8,  
Plaintiff reserves the right to introduce such records or call witnesses to testify about such records.

1 *Konda*, 2023 WL 2864562, at \*4. *Konda* did not reach the issue of whether the Plaintiff did in fact  
 2 waive privilege based on her mere use of the word “anxiety.” Plaintiff contends it does not.

3 The result is the same if federal privilege principles are applied. The Western District of  
 4 Washington takes a “middle ground” approach to waiver of psychotherapist-patient privilege  
 5 under which “[a] plaintiff waives the privilege by alleging more complex distress, including “any  
 6 specific psychiatric injury or disorder, or unusually severe distress.” *Dawson v. S. Corr. Entity*,  
 7 No. C19-1987RSM, 2021 WL 2012310, at \*3 (W.D. Wash. May 20, 2021). As described above,  
 8 Mr. Teixeira alleges no specific psychiatric injury or disorder, or unusually severe distress. He has  
 9 not waived psychotherapist-patient privilege. This Court consistently holds that allegations of  
 10 emotional harm such as embarrassment and anxiety, are non-medical and therefore do not waive  
 11 privilege. *Dawson*, 2021 WL 2012310 at \*3; *Karrani v. JetBlue Airways Corp.*, No. C18-01510-  
 12 RSM, 2019 WL 2269818, at \*6 (W.D. Wash. May 28, 2019) (privilege may be waived only if  
 13 individual alleges anxiety “in a manner that suggests a clinical condition of anxiety.”)

14 **2. Plaintiff confirmed it has no records responsive to RFP 10.**

15 In RFP 10, Defendant requests “All medical records from March 1, 2024 to May 23, 2024  
 16 that relate to your ability to return to work following your cancer treatment.” On April 14, 2024,  
 17 Plaintiff confirmed that he had no documents responsive to RFP 10.

18 The following day, Defendant attempted to re-write RFP 10 to include records that “need  
 19 not specifically mention his ability to work” and that such records could include “dates that he will  
 20 have to be out.” This is a blatant attempt to re-write RFP 10. RFP 10 is not a request for any  
 21 medical records related to Mr. Teixeira’s cancer.

22 Even where evidence is relevant and proportional, the Court may limit discovery where  
 23 “the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some  
 24 other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P.  
 25 26(b)(2)(C)(i). Mozilla Corporation expands RFP 10 to include all of Mr. Teixeira’s records with  
 26 the argument that these could include dates of Plaintiff’s absence due to medical appointments  
 between March 1, 2024 to May 23, 2024. Plaintiff was in fact working during the requested time

1 period of March 1, 2024 and May 23, 2024 (the day Mozilla forced him on administrative leave).  
 2 See FAC ¶ 74. To the extent that establishing dates of absence is Mozilla Corporation's purpose  
 3 in obtaining voluminous, sensitive, and complex medical records, Mozilla Corporation may  
 4 consult its own internal records of Mr. Teixeira's requests for paid time off. Such an approach  
 5 would not invade the privacy of Mr. Teixeira, use records that are in Mozilla's own possession  
 6 and control, and be far less burdensome to Mr. Teixeira.

7 To be clear, Mr. Teixeira acknowledges that he has waived, to some extent, his physician-  
 8 patient privilege by asserting claims of disability discrimination. RCW 49.60.510. Mr. Teixeira  
 9 accordingly has offered to produce medical records establishing his diagnoses.

10 Mozilla's motion to compel RFP 10 must be denied because RFP 10 doesn't request his  
 11 medical records. It requests medical records relating to his ability to return to work, and Mr.  
 12 Teixeira has confirmed he has none.

13 **3. Mozilla Corporation's overreaching RFP 9 seeks records of Plaintiff's**  
 14 **medical care over a year before his cancer diagnosis.**

15 In RFP 9, Defendant requests "[a]ll medical records from August 1, 2019 to August 1,  
 16 2022," essentially asking for medical records for three years prior to Mr. Teixeira's start date at  
 17 Mozilla. Plaintiff objected on the basis of, among other things, privilege and relevance, and stated  
 18 it would not produce medical records from before Mr. Teixeira's cancer diagnosis in October 2023.  
 19 On February 4, 2025, four months after receiving Plaintiff's objections, Defendant acknowledged  
 20 that RCW 49.60.510 allows the disclosure of records no older than two years before the first  
 21 alleged unlawful act, and clarified that it was only requesting medical records "from two years  
 22 prior" to Mr. Teixeira's cancer diagnosis. Cates Decl. Ex. C at 3.

23 Mr. Teixeira was diagnosed with ocular melanoma on October 3, 2023. Dkt. 28 at ¶ 44.  
 24 Incorporating Mozilla's acknowledgment of the temporal limitations of RCW 49.60.510, what  
 25 remains of RFP 9 is a request for Plaintiff's medical records from October 3, 2021 to August 1,  
 26 2022.



1 There is no need for Mozilla to have Mr. Teixeira's medical files from October 3, 2021  
 2 through August 1, 2022. This period was over a year before he was diagnosed with cancer, and he  
 3 didn't even start working at Mozilla until August, 2022. FAC ¶ 23. Mozilla is requesting medical  
 4 records for a time period in which Mr. Teixeira was not disabled and not working at Mozilla.  
 5 Mozilla has articulated no relevance to medical records from this time period, and it cannot. The  
 6 allegations and defenses in this case are entirely divorced from the period of October 3, 2021  
 7 through August 1, 2022. Under Fed. R. Civ. P. 26(b)(1), Mr. Teixeira's inherent privacy interest  
 8 in "all medical records" from before he commenced employment at Mozilla or was diagnosed with  
 9 cancer far outweighs their probative value.

10 To the extent Mozilla contends in Reply that it is entitled to records for the two years  
 11 immediately preceding Mr. Teixeira's diagnosis on the basis of its February 4 letter, Plaintiff has  
 12 never agreed or acquiesced to such a revision to RFP 9. Mozilla moved to compel based on the  
 13 RFP 9 it wrote and served, and cannot now contend it is entitled to medical records from an entirely  
 14 different time period. Regardless, Mr. Teixeira's medical records from the two year period  
 15 immediately preceding his cancer diagnosis are equally susceptible privacy concerns, and equally  
 16 devoid of probative value.

17 Mozilla's efforts in pursuit of RFP 9 lay bare its intention to leverage requests for medical  
 18 records to make litigation as painful, embarrassing, and expensive for Mr. Teixeira as possible.

### 19 **C. Defendant's Reply<sup>3</sup>**

20 After two months of extensive meet and conferring, during which Plaintiff refused to  
 21 acknowledge the clear mandate of RCW 49.60.510(b), Plaintiff now—for the first time—  
 22 concedes, "that he has waived, to some extent, his physician-patient privilege by asserting claims  
 23 of disability discrimination." Yet, Plaintiff argues that he may selectively produce only records  
 24 sufficient to "establish his cancer diagnosis," while withholding all other records relating to his  
 25

26 <sup>3</sup> This submission references Defendant's Original Answer; Amended Answer to FAC has since been filed. (ECF 38).

1 disability and his claims of “anxiety.” This is improper. Plaintiff’s attempt to use the patient-  
 2 physician privilege as both a sword and a shield is contrary to established law. It is also contrary  
 3 to the plain text of RCW 49.60.510(b), which Plaintiff conspicuously fails to address. Additionally,  
 4 Plaintiff ignores Defendants’ arguments that Plaintiff’s medical records are necessary and relevant  
 5 for Defendants’ defense of the matter. Plaintiff is not entitled to attorney’s fees as Plaintiff’s failure  
 6 to acknowledge the clear applicability of RCW 49.60.510(b) and the relevance of the records,  
 7 necessitated judicial intervention.

#### 8 **IV. DEFENDANT’S CONCLUSION**

9 Plaintiff has placed his emotional and physical condition directly at issue through his  
 10 claims of disability discrimination, false light defamation, anxiety, and significant non-economic  
 11 damages. Plaintiff’s attempt to limit discovery by claiming “garden variety” damages fails because  
 12 his specific allegations constitute a waiver of privilege under RCW 49.60.510(b) and established  
 13 case law. His refusal to provide records relevant to baseline health, causation, and treatment,  
 14 unfairly prejudices Defendants’ ability to prepare a defense. The requested medical records in  
 15 RFPs 8-10 are relevant, non-privileged under the waiver doctrine, and proportional to the needs of  
 16 the case. Accordingly, Mozilla respectfully requests the Court to compel Plaintiff to either produce  
 17 all requested records or sign an authorization to release his records.

#### 18 **V. PLAINTIFF’S CONCLUSION**

19 Mr. Teixeira has emphasized repeatedly that he is not waiving psychotherapist-patient  
 20 privilege, that he is not alleging a specific diagnosable condition caused or worsened by Mozilla’s  
 21 treatment, and that he does not intend to introduce records regarding the same at trial. Yet Mozilla  
 22 Corporation contends it is entitled to psychiatric, psychological, or counseling records. Mozilla  
 23 Corporation is not entitled to these records under applicable law, which squarely shields the  
 24 counseling records of individuals alleging garden variety emotional distress. Mozilla  
 25 Corporation’s escalation of this issue demonstrates either a profound misunderstanding of the legal  
 26 distinction between garden variety emotional distress damages and damages for a specific

1 diagnosable condition, or the lengths Mozilla Corporation is willing to go to embarrass and punish  
2 Plaintiff for his allegations.

3 Mozilla Corporation has moved to compel other medical records in RFP 9 and 10 which  
4 are either irrelevant to the issues in this case (RFP 9), or which Plaintiff has confirmed he does not  
5 have (RFP 10). Plaintiff respectfully requests that the Court deny Mozilla Corporation's motion to  
6 compel and award Plaintiff his fees.

7  
8 DATED this 1st day of May, 2025.

9 DLA PIPER LLP (US)

10 By: /s/ Anthony Todaro

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**CERTIFICATION**

I certify that the full response by the Plaintiff has been included in this submission, and that prior to making this submission the parties conferred to attempt to resolve this discovery dispute in accordance with LCR 37(a).

DATED this 1st day of May, 2025

By: /s/ Anthony Todaro

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2025, I caused a true and correct copy of the foregoing document to be served on the parties listed below in the manner indicated:

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 Foundation*

- ☐ Via Hand Delivery
- ☐ Via U.S. Mail
- ☒ Via E-mail
- ☒ Via the Court's  
E-Service Device

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this 1st day of May, 2025.

s/ Jacey Bittle  
 Jacey Bitte, Legal Executive Assistant